

Application No.: 10/647,699
Filed: August 25, 2003
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Examiner: William E. Tapolcai
Group Art Unit: 3744

Remarks/Arguments

Claims 1-20 were in the application as examined. By this amendment, claims 1-16 and 18 are amended and new claims 21-23 have been added. It is respectfully submitted that no new matter is added to the application by these amendments. Reconsideration and reexamination is respectfully requested.

Claim rejections under 35 U.S.C. §103

Claims 1, 2, 6, 8, 9, and 14 stand rejected under 35. U.S.C. §103(a) as being unpatentable over U.S. Patent no. 6,449,958 to Foye in view of U.S. patent No. 6,067,816 to Hodosh. The rejection is respectfully traversed.

In a § 103 rejection, the Examiner has the initial burden of establishing a prima facie case of obviousness based upon the prior art references. *In re Fritch*, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Further, a rejection of the invention is improper when the requisite teaching or suggestion to combine the teachings of the prior art references is absent. *In re Bell*, 991 F.2d 781, 26 U.S.P.Q.2d 1529 (Fed. Cir. 1993). In other words, "obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed Cir. 1992)." M.P.E.P. § 2143.01 The showing of combinability, in whatever form, must be "clear and particular." *In re Dembiczak*, 175 F.3d 994, 50 USPQ 2d 1614 (Fed. Cir. 1999)

Foye '958 discloses a beverage cooling apparatus that includes a housing 12 with a thermoelectric device 67, a fan 68, and heat sinks 65, 66 to cool a beverage can or cup disposed in the housing (col. 6, ll. 37-39) or in a container 30 in the housing (col. 5, line 27 et seq.). Two adjacent apparatuses are suggested to form a unit 72 (col. 6, ll. 16-18).

Hodosh '816 discloses an insulated soft-sided case 11 with two externally accessible receptacles 15, 16 in a top panel 13 of the case. Each receptacle is shaped and sized to closely approximate the container to be held in the receptacle (col. 4, ll. 60-67).

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Here, there is no basis for making the alleged combination, and therefore the Examiner has not raised a *prima facie* case of obviousness. The Examiner seems to suggest, without support, that if one ordinarily skilled in the art had started with the structure of Foye and wished to accommodate different sized containers, it would have been obvious to make the container 30 of Foye "size adjustable" in view of the Hodosh teaching that each receptacle is shaped and sized to closely approximate the container to be held in the receptacle.

Nothing in either reference or in the alleged "purpose" asserted by the Examiner suggests the alleged combination. The container 30 of Foye is already "size adjustable" in the same sense that Hodosh is "size adjustable." Thus, there is nothing in Foye or in logic that would lead one to combine the teachings. Foye teaches that the interior space of the container 30 is sized to releasably and fittedly receive the cylindrical can or cup-type container therein (Foye col. 4, ll. 50-52). This is exactly the same teaching as Hodosh: each receptacle is shaped and sized to closely approximate the container to be held in the receptacle (Hodosh: col. 4, ll. 60-67). Thus, Hodosh adds nothing that is not already taught in Foye. The combination is unwarranted.

Moreover, the alleged combination is untenable. Foye teaches that a securing means 40 releasably secures a cylindrical can in the container 30 (Foye col. 4, ll. 53-54). Hodosh teaches that the receptacle has a mouth 25 that closely approximates the external perimeter and size of the can (Hodosh col. 4, ll. 65-67), and that the receptacle itself is pliable and slightly resilient so that it grips the container (Hodosh col. 5, ll. 21-30). Foye requires a securing means 40 to grip the can because there must be sufficient air flow around the can in the container 30 to cool it, so something other than the container itself must grip the can (assuming that the can is smaller than the interior of the container 30). On the other hand, the mouth 25 in Hodosh does not grip the can; rather, the sides of the receptacle itself grip the can. Cooling in Foye occurs by convection; cooling in Hodosh occurs by transmission. To incorporate a structure similar to Hodosh into Foye would defeat the convection cooling function in the container 30.

In any event, even if the alleged combination were tenable, it still would not reach the invention. Claims 1, 2, 6, 8, 9, and 14, as amended all require a container support configured to support beverage containers having different vertical heights and different cross-sectional area sizes. Neither Foye nor Hodosh disclose a container support so configured. In this respect, Foye

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discloses a cooling apparatus with at most two containers 30, each having a different size or shape. Hodosh discloses an insulated cooler having two receptacles, each possibly having a different size or shape. Neither discloses a container support capable of supporting different sized containers in the same chamber. Claims 1, 2, 6, 8, 9, and 14 are therefore patentable even over the alleged combination.

Applicants acknowledge with thanks the Examiner's determination of the allowability of claims 3-5, 7, and 10-13 and the allowance of claims 15-20. Nevertheless, Applicants have amended some of these claims, not for any purposes of patentability, but to clarify some terms and render the claims more internally consistent. Further, Applicants have added new claims 21-23 to more fully cover the claimed invention. The new claims all require a beverage container support in the same sense as claims 1, 2, 6, 8, 9, and 14. Therefore, new claims 21-23 are patentable for the same reasons that claims 1, 2, 6, 8, 9, and 14 are patentable.

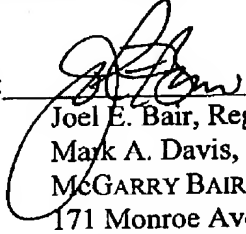
It is respectfully submitted that all of the claims in the application are allowable over the prior art of record. Early notification of allowability is respectfully requested.

If there are any questions regarding this matter, please contact the attorney of record

Respectfully submitted,

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